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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/724,857	11/28/2000	Koen Weterings	023070-114700US	7630
20350	7590	02/05/2002		
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			EXAMINER	

COLLINS, CYNTHIA E

ART UNIT	PAPER NUMBER
1638	

DATE MAILED: 02/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/724,857	WETERINGS ET AL.
	Examiner Cynthia Collins	Art Unit 1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 28 November 2000.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-80 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) \_\_\_\_\_ is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) 1-80 are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
     If approved, corrected drawings are required in reply to this Office action.  
 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.  
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.  
 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.                            4)  Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.  
 5)  Notice of Informal Patent Application (PTO-152)  
 6)  Other:

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-7, 9-11, 13-15, 17-18, 20-23 and 78, drawn to an isolated polynucleotide of SEQ ID NO:1 which specifically modulates transcription in a plant suspensor cell and/or basal region of a plant embryo, an expression cassette, a vector, a host cell, and a plant, classified in class 536, subclass 24.1, for example.
- II. Claims 6, 8-14, 16-17, 19-22 and 24-25, drawn to an isolated polynucleotide of SEQ ID NO:6 which specifically modulates transcription in a plant suspensor cell and/or basal region of a plant embryo, a vector, a host cell, and a plant, classified in class 435, subclass 320.1, for example.
- III. Claims 32-36, 42-46, 52-55 and 60-65, drawn to an isolated nucleic acid of SEQ ID NO:3 encoding a G564 polypeptide, an expression cassette, a host cell, and a transgenic plant, classified in class 536, subclass 23.6, for example.
- IV. Claims 37-41, 47-51, 56-59 and 66-71, drawn to an isolated nucleic acid of SEQ ID NO:7 encoding a C541 polypeptide, an expression cassette, a host cell, and a transgenic plant, classified in class 800, subclass 298, for example.
- V. Claims 26-31, drawn to a method of modulating transcription in a plant suspensor cell and/or basal region of a plant embryo, classified in class 800, subclass 286, for example.
- VI. Claims 72-73, drawn to an isolated polypeptide of SEQ ID NO:3, classified in class 530, subclass 350, for example.

- VII. Claims 74-75, drawn to an isolated polypeptide of SEQ ID NO:7, classified in class 530, subclass 350, for example.
- VIII. Claim 76, drawn to an antibody capable of binding an isolated polypeptide of SEQ ID NO:3, classified in class 530, subclass 387.1, for example.
- IX. Claim 77, drawn to an antibody capable of binding an isolated polypeptide of SEQ ID NO:7, classified in class 530, subclass 387.1, for example.
- X. Claims 79-80, drawn to a method of detecting a polynucleotide in a sample, classified in class 436, subclass 94, for example.

The inventions are distinct, each from the other because of the following reasons:

Inventions I-IV and VI-IX are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions represent structurally different polynucleotides, polypeptides and antibodies. Therefore, where structural identity is required, such as for hybridization, expression, or immunological detection, the different polynucleotides, polypeptides and antibodies have different effects. The nucleic acids of Inventions I-IV, the polypeptides of Inventions VI and VII and the antibodies of Inventions VIII and IX are also functionally distinct from one another and can be used in different methods, such as hybridization methods in the case of the nucleic acids, immunization methods in the case of the polypeptides, and immunoassay methods in the case of the antibodies. The nucleic acids of Inventions I-IV are functionally distinct from one another because the nucleic acids of Inventions I-II are promoter sequences from different genes, and the nucleic acids of Inventions III-IV are coding sequences from different genes. The polypeptides of Inventions VI and VII are functionally distinct from one another because the polypeptides of

Inventions VI and VII have different amino acid sequences and are encoded by different genes.

The antibodies of Inventions VIII and IX are functionally distinct from one another because they specifically recognize different proteins.

Inventions I-II and V are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the products, an isolated polynucleotide of SEQ ID NO:1 and an isolated polynucleotide of SEQ ID NO:6, can be used in materially different processes of using those products, such as methods of isolating a polynucleotide from a genomic library by hybridization.

Inventions I and X are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product, an isolated polynucleotide of SEQ ID NO:1, can be used in a materially different process of using that product, such as a method of modulating transcription.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, their recognized divergent subject matter, and the requirement for different areas of search, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Remarks***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia Collins whose telephone number is (703) 605-1210. The examiner can normally be reached on Monday-Friday 8:45 AM -5:15 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson can be reached on (703) 306-3218. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

CC

January 31, 2002

  
PHUONG T. BUI  
PRIMARY EXAMINER